

BRIEF FOR RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

08-1059

CHARLES CRAWFORD,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR REVIEW OF AN ORDER OF THE
FEDERAL COMMUNICATIONS COMMISSION

THOMAS O. BARNETT
ASSISTANT ATTORNEY GENERAL

ROBERT B. NICHOLSON
ROBERT J. WIGGERS
ATTORNEYS

U.S. DEPARTMENT OF
JUSTICE
WASHINGTON, D.C. 20530

MATTHEW B. BERRY
GENERAL COUNSEL

DANIEL M. ARMSTRONG
ASSOCIATE GENERAL COUNSEL

PAMELA L. SMITH
COUNSEL

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
(202) 418-1740

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

A. Parties:

All parties, intervenors, and amici appearing below and in this Court are listed in the Brief of Petitioner Charles Crawford.

B. Rulings Under Appeal:

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner, Texas) (Batesville, Texas) (Tilden, Texas),
Memorandum Opinion and Order, 23 FCC Rcd 640 (2008) (JA)

C. Related Cases:

The agency order on review has not previously been before this Court or any other court. *Charles Crawford v. FCC & USA*, 417 F.3d 1289 (D.C. Cir. 2005), involved the same parties and issue raised in this case. Counsel are not aware of any other related cases before this or any other court.

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GLOSSARY

Commission or FCC

Federal Communications Commission

Commission's Order

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner Texas) (Batesville, Texas) (Tilden, Texas), Memorandum Opinion and Order, 23 FCC Rcd 640 (2008) (JA)

Crawford

Petitioner Charles Crawford

Crawford I

Crawford v. FCC, 417 F.3d 1289 (D.C. Cir. 2005)

Quanah NPRM

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Quanah, Texas), Notice of Proposed Rule Making, 15 FCC Rcd 15809 (2000)

Shiner Staff Decision

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner, Texas), Report and Order, 19 FCC Rcd 4327 (2004) (JA)

Tilden Staff Decision

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Tilden, Texas), Report and Order, 19 FCC Rcd 6112 (2004) (JA)

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BRIEF FOR RESPONDENTS

ISSUE PRESENTED

Whether a petitioner for proposed rulemakings to amend the Table of Allotments for FM radio stations received adequate notice that his petitions could be precluded from consideration by mutually exclusive FM allotment proposals that were under consideration in an ongoing rulemaking proceeding?

STATUTES AND REGULATIONS

Pertinent statutory provisions and regulations are set forth in the addendum to this brief.

COUNTERSTATEMENT

This case involves a challenge to the FCC’s dismissal of certain petitions for rulemaking to amend the Table of Allotments for FM radio channels.

1. Statutory and Regulatory Background. Section 307(b) of the Communications Act of 1934, 47 U.S.C. §307(b), directs the FCC to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”

The Commission has established a Table of Allotments to aid in the assignment of FM radio broadcasting stations. *Revision of FM Broadcast Rules*, First Report and Order, 40 FCC 662, 667 ¶ 37 (1962). Under the rules then in effect, the Table of Allotments, currently codified at 47 C.F.R. § 73.202(b), set forth the nonreserved FM band radio channels allotted to each state by community.¹ The Table of Allotments also specifies the class of each allotted channel, based on permissible power output and antenna height, which determines each station’s service area.² To avoid harmful interference, FCC rules also set

¹ In November 2006, the Commission revised the procedures for amendments of the Table of Allotments, which now only lists vacant allotments. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

² *See* 47 C.F.R. §§ 73.210-73.211. In ascending order of signal contour, radio stations are classified as Class A, B1, C3, C2, C1, C0, and C.

forth channel spacing and minimum distance separation requirements. *See* 47 C.F.R. § 73.207.

Changes to the Table of Allotments are made through rulemaking proceedings initiated by the FCC or by the filing of a petition for rulemaking by an interested member of the public. *See* 47 C.F.R. §§ 1.401, 1.420. The Table of Allotments determines the universe of channels/station class combinations for which applications for construction permits for new nonreserved FM band stations may be made.

Petitions for rulemaking to amend the Table of Allotments are subject to one of the FCC's "cut-off" rules, 47 C.F.R. § 1.420(d). This cut-off rule permits counterproposals to be filed to a proposed amendment to the Table of Allotments, but expressly provides that "[c]ounterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments." *Id.* Thus, when the FCC opens a proceeding that proposes a particular new FM radio allotment, it establishes a date certain for "all interested parties" to file comments, which may take the form of a counterproposal, and reply comments on the proposed rule. Counterproposals in conflict with the proposed channel allotment must be filed during the initial comment period in the proceeding; those filed thereafter, whether during the period for reply comments or as a purportedly stand-alone petition for rulemaking, are "cut-off" from

consideration. *See* 47 C.F.R. § 1.420(d). *See generally Crawford v. FCC*, 417 F.3d 1289, 1293 (D.C. Cir. 2005) (“*Crawford I*”).

It is well settled that the FCC may set firm deadlines for filing conflicting proposals in order to avoid a “daisy chain” of mutually exclusive applications, each requiring a hearing. *Crawford I*, 417 F.3d at 1293; *Florida Inst. of Technology v. FCC*, 952 F.2d 549, 550 (D.C. Cir. 1992); *Ranger v. FCC*, 294 F.2d 240 (D.C. Cir. 1961).³ “By setting a firm deadline for the filing of conflicting proposals, the FCC’s cutoff rule prevents this kind of daisy chain of applications from going on indefinitely.” *Crawford I*, 417 F.3d at 1293.

2. Prior Proceedings. On May 18, 2001, Charles Crawford filed a petition for rulemaking to amend the Table of Allotments to add Channel 245C3 at Tilden,

³ The “daisy-chain problem” was well described in *Ranger*:

Let us assume three towns, A, B and C, fifty miles apart in a straight geographical line. Application for a broadcast station at A is made. Grant of that application would preclude a station at B on the same or an adjacent channel; it would not affect the possibility of a station at C. Before the application for A has been acted upon, an applicant files for a license at B and asks for a comparative hearing with A. A grant in B would preclude a station at C. Therefore *potential applicants for C must file in the A-B case in order to protect their rights*. Theoretically this reaction could go on indefinitely and could eventually involve every potential broadcast-station situs in the United States.

294 F.2d at 243 (emphasis added).

Texas (JA). *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Tilden, Texas)*, Notice of Proposed Rule Making, 16 FCC Rcd 13915 (2001) (JA). On May 23, 2001, Crawford filed a petition for rulemaking proposing to allot Channel 250A to Batesville, Texas (JA). *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Batesville, Texas)*, Notice of Proposed Rule Making, 16 FCC Rcd 12682 (2001) (JA). And on May 29, 2001, Crawford filed comments in a proceeding to amend the Table of Allotments to add Channel 232A at Shiner, Texas expressing his “present intention to apply for the proposed channel (232A at Shiner, Texas) if allotted; and, if authorized, to promptly construct and operate the contemplated FM radio station.” (JA). *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner, Texas)*, Notice of Proposed Rule Making, 16 FCC Rcd 8937 (2001) (JA).

a. The Staff’s Decisions. On March 12, 2004, the FCC’s staff released an order dismissing and terminating the Shiner proceeding because the proposed allotment should have been, but was not, filed on or before the October 10, 2000 cut-off date specified in a proceeding proposing the allotment of Channel 233C3 to Quanah, Texas. *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner, Texas)*, Report and Order, 19 FCC Rcd 4327 ¶ 2 (2004) (“*Shiner Staff Decision*”) (JA); *see also Amendment of Section 73.202(B)*,

Table of Allotments, FM Broadcast Stations (Quanah, Texas), Notice of Proposed Rule Making, 15 FCC Rcd 15809, 15813 ¶ 4 & 15814, Appendix ¶ 3(b) (2000).

(“*Quanah NPRM*”). This is because in the Quanah proceeding, a counterproposal had been made to allot Channel 232A at Flatonia, Texas, which was mutually exclusive with the proposal to allot the same channel at Shiner, Texas. *Shiner Staff Decision* ¶ 2 (JA). “Under the circumstances,” the staff explained, “the Shiner proposal would [have] had to be filed by the October 10, 2000, comment date . . . in order to receive consideration.” *Id.* (JA). Because that did not happen, the staff “dismiss[ed] the Shiner proposal . . . as untimely.” *Id.* (JA).

On April 5, 2004, the FCC’s staff likewise dismissed Crawford’s petition for rulemaking to allot channel 245C3 at Tilden, Texas. *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Tilden, Texas)*, Report and Order, 19 FCC Rcd 6112 (2004) (“*Tilden Staff Decision*”) (JA). The staff noted that Crawford’s Tilden allotment proposal was mutually exclusive with a counterproposal in the Quanah proceeding to allot Channel 245C1 to San Antonio, Texas. *Id.* ¶ 2 (JA). Because “Crawford filed his Tilden proposal more than eleven months after [the October 10, 2000] due date” in the Quanah proceeding, the staff “dismiss[ed] the Tilden petition for rule making . . . as untimely.” *Tilden Staff Decision* ¶ 2 (JA).

Crawford filed applications for review with the Commission of the *Shiner Staff Decision* and the *Tilden Staff Decision*. The Commission’s staff then referred Crawford’s proposal to allot Channel 250A at Batesville, Texas, to the Commission. See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shiner, Texas) (Batesville, Texas) (Tilden, Texas)*, Memorandum Opinion and Order, 23 FCC Rcd 640 & n.3 (2008) (“*Commission Order*”) (JA).

b. Crawford I. In the meantime, this Court affirmed the Commission’s dismissal of a proposal by Crawford to allot an FM channel at Mason, Texas on the ground that it, too, was mutually exclusive with the Quanah counterproposal and had been untimely filed. *Crawford I*, 417 F.3d at 1295-99. In doing so, the Court rejected Crawford’s argument that he lacked sufficient notice of the Quanah counterproposals to support preclusion of his Mason allotment proposal. The Court explained that the FCC’s cut-off rule, which had been clearly set forth in the *Quanah NPRM*, “put all interested parties on notice that their proposals could be precluded by *any* counterproposal – whether foreseeable or not – that was filed by the deadline, mutually exclusive with the Quanah proposal, and mutually exclusive with their own.” 417 F.3d at 1296 (emphasis in original). The FCC’s decision to preclude Crawford’s Mason proposal was thus “more than just a ‘logical outgrowth’ of the Quanah NPRM”; the agency was “‘merely doing that which [it]

announced’ it would do.” 417 F.3d at 1296 (citation omitted). The Court concluded by stating that the “FCC’s cutoff rule puts prospective broadcasters on notice that they should file their proposals as soon as they are ready – or risk being precluded by an earlier-filed proposal or counterproposal that has received cutoff protection.” *Id.*⁴

c. The Commission’s Decision. On January 18, 2008, the Commission released a Memorandum Opinion and Order denying the applications for review and dismissing Crawford’s Batesville proposal. (JA). The Commission emphasized that this Court in *Crawford I* “concurred with our determination that the *Quanah NPRM* placed all interested parties on notice that their proposals could be precluded by any counterproposal, ‘whether foreseeable or not,’ filed by the comment date.” *Commission Order* ¶ 6 (JA).

Here, “the Crawford proposal for Channel 232A at Shiner conflicted with the proposal to allot Channel 232A at Flatonia, his proposal for Channel 250A at

⁴ As a second and independent reason for determining that Crawford had adequate notice that his proposal could be precluded, the Court found that because of the FCC’s minimum separation requirements, he should have been able to anticipate that the initial proposal to allot channel 233C3 at Quanah “could conflict with a counterproposal that included only a single channel up to 147 miles away,” and that “[s]uch a channel, in turn, could have conflicted with another class C3 channel . . . as far away as another 147 miles.” 417 F.3d at 1296. Thus, the Court concluded, “the foreseeable radius of conflict arising from even such a simple proposal was 294 miles from Quanah,” which would easily have encompassed Crawford’s proposal to allot a channel at Mason, Texas. *Id.* at 1296-97.

Batesville conflicted with the proposal to allot Channel 249C1 at Converse, and his proposal to allot Channel 245C3 at Tilden conflicted with the proposal to allot Channel 245C1 at San Antonio.” *Commission Order* ¶ 3 (JA). Because each of Crawford’s petitions “was in conflict with the Quanah Counterproposal,” the Commission found that they “should have been treated as untimely filed counterproposals” in that docket. *Id.* (JA). The Commission accordingly denied the applications for review of the staff’s dismissal of the Shiner and Tilden proceedings, and dismissed Crawford’s petition for rulemaking in the Batesville proceeding. *Id.* ¶¶ 6-8 (JA).

SUMMARY OF ARGUMENT

This case is controlled by *Crawford I*. Under circumstances which are the same in all relevant respects as those presented here, the Court in *Crawford I* held that the *Quanah NPRM* put Crawford on notice that, if not filed by a specified date, his FM channel allotment proposals could be precluded from consideration as one of the results of the Quanah proceeding. 417 F.3d at 1295-97.

The *Quanah NPRM* specifically announced that, to be considered, all counterproposals to the proposed channel allotment were to be filed by October 10, 2000, and that any petition for rulemaking that conflicted with any proposals under consideration in the Quanah proceeding would only be considered if they too were filed by October 10, 2000. *See* 15 FCC Rcd at 15814, Appendix ¶ 3(b). It is

undisputed here that each of Crawford’s proposals conflicted with allotment proposals under consideration in the Quannah proceeding, and that each proposal was filed after the deadline for filing mutually exclusive proposals. Thus, as the Court stated in *Crawford I*, here too, the “FCC was ‘merely doing that which [it] announced’ it would do” (417 F.3d at 1296; citation omitted), when it dismissed the petitions that contained Crawford’s proposed FM channel allotments to Shiner, Tilden, and Batesville, Texas.

ARGUMENT

I. STANDARD OF REVIEW

In order to prevail on review, Crawford must demonstrate that the challenged agency action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). “Under this ‘highly deferential’ standard of review, the court presumes the validity of agency action . . . and must affirm unless the Commission failed to consider relevant factors or made a clear error in judgment.” *Cellco Partnership v. FCC*, 357 F.3d 88, 93-94 (D.C. Cir. 2004).

II. CRAWFORD’S CURRENT PETITION FOR REVIEW IS BARRED BY *CRAWFORD I*.

This Court in *Crawford I* held that the *Quannah NPRM* “put all interested parties on notice that their proposals could be precluded by *any* counterproposal – whether foreseeable or not – that was filed by the deadline, mutually exclusive

with the Quanah proposal, and mutually exclusive with their own.” 417 F.3d at 1296 (emphasis in original). Rejecting Crawford’s contention in that case that “he lacked adequate notice,” the Court found that the preclusive effect on Crawford’s proposals “was more than just a ‘logical outgrowth’ of the Quanah NPRM,” because the “FCC was ‘merely doing that which [it] announced’ it would do.” *Id.* (citation omitted).

The Commission in the *Quanah NPRM* expressly announced that interested parties would be permitted to file initial comments “on or before **October 10, 2000**,” 15 FCC Rcd at 15813 ¶ 4 (emphasis in original), that counterproposals will be considered “if advanced in initial comments,” and that conflicting petitions for rule making “will be considered as comments . . . as long as they are filed before the date for filing initial comments,” but “[i]f they are filed later than that, they will not be considered in connection with the decision in this docket.” *Id.* at 15814, Appendix ¶ 3(b). When Crawford did not come forward with his proposals until months after October 10, 2000, and his proposals were found to conflict with a timely filed counterproposal in the Quanah proceeding, Crawford’s proposals were treated precisely as the *Quanah NPRM* said that proposals meeting that description would be treated. They were dismissed as untimely.

Resurrecting arguments put forth and rejected in *Crawford I*, Crawford contends that the Commission erred in dismissing his proposals because he had no

“constructive notice” of the counterproposals in the *Quanah NPRM*, since they allegedly were not a “logical outgrowth” of the initial allotment proposal in that case. Brief of Petitioner at 5. But as the Court in *Crawford I* held, but Crawford apparently does not accept, Crawford’s reliance upon the logical outgrowth doctrine is misplaced. That doctrine applies when an agency does something which was not mentioned in a notice of proposed rulemaking as a possible outcome of the proceeding. The issue then becomes whether that outcome, although not specifically mentioned in the notice as a possibility, is nonetheless a logical outgrowth of what was mentioned in the notice so that the notice can be upheld as adequate under the Administrative Procedure Act.

This case presents a different situation, in which the agency has specifically advised interested parties “that the proceeding would encompass mutually exclusive counterproposals and that late-filed conflicting proposals would be cut off.” *Crawford I*, 417 F.3d at 1296 (citing *Quanah NPRM*, 15 FCC Rcd at 15814; 47 C.F.R. § 1.420(d)). As this Court in *Crawford I* explained, the agency thereby “put all interested parties on notice that their proposals could be precluded by *any* counterproposal – whether foreseeable or not – that was filed by the deadline, mutually exclusive with the *Quanah* proposal, and mutually exclusive with their own.” 417 F.3d at 1296 (emphasis in original).

Crawford makes no attempt to distinguish *Crawford I*.⁵ Instead, he simply urges this panel to limit the application of that decision to situations in which counterproposals were precluded by proposals involving more closely related communities. Brief of Petitioner at 6-9.⁶ But it is well settled that absent en banc review, a prior panel decision controls the decision of subsequent panels on the same question. *E.g.*, *Ranger Cellular v. FCC*, 348 F.3d 1044, 1049-50 (D.C. Cir. 2003), *cert. denied*, 541 U.S. 1096 (2004). Nothing in the cited cases or in *Crawford I* suggests that there is any geographic limit on the Commission's cut-off rule. Crawford's proposed limit appears to be his own creation, based in part on an independent investigation of the distances between the communities affected by each decision. *See* Brief of Petitioner at 6-9. To be sure, *Crawford I* discussed the

⁵ Crawford suggests that the Commission has only made clear the risk of preclusion of "counterproposals, not rulemaking petitions for new allotments." Brief of Petitioner at 6 (emphasis in original). But the *Quannah NPRM* made clear that conflicting "petitions for rule making," as well as counterproposals, would "not be considered" if they were not filed by the October 10, 2000 initial comment date. 15 FCC Rcd at 15814, Appendix ¶ 3(b). Indeed, the proposal that this Court considered in *Crawford I* was initiated not by counterproposal, but by petition for rulemaking. *See* 417 F.3d at 1294.

⁶ *See, e.g.*, *Owensboro on the Air, Inc. v. United States*, 262 F.2d 702, 708 (D.C. Cir. 1959); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pinewood, South Carolina)*, 5 FCC Rcd 7609 (1990); *Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations (Medford and Grants Pass, Oregon)*, 45 Rad. Reg. 2d 359 (1979); *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments [Pensacola, Florida]*, 2 FCC Rcd 1290 (1987); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Taccoa, Sugar Hill and Lawrenceville, Georgia)*, 16 FCC Rcd 21191 (2001).

distances between Quanah and Mason, but it did so in order to illustrate a “second” and independent reason supporting the Commission’s decision in that case – that Crawford could in fact have anticipated that his proposal might conflict with potential counterproposals in the Quanah proceeding. 417 F.3d at 1296. That second reason in no way undermines the force of the first – that Crawford’s proposal was precluded by the Quanah counterproposal “whether foreseeable or not.” *Id.* Likewise, Crawford’s calculation of the distances that would meet his standards for reasonably foreseeable counterproposals to the initial Quanah allotment proposal (Brief of Petitioner at 9-11) is entirely beside the point. In short, Crawford’s attempt to engraft a foreseeability requirement on the *Quanah NPRM* cannot survive *Crawford I*.

* * * * *

In *Crawford I*, this Court held that the Commission properly dismissed Crawford’s proposal to allot an FM broadcast channel at Mason, Texas because it conflicted with a counterproposal that had been filed in the Quanah proceeding and it had not been filed by the October 10, 2000 cut-off date announced in the *Quanah NPRM*, regardless of whether the counterproposal was foreseeable. *See* 417 F.3d at 1294, 1296. The same is true here. As the Commission found, and Crawford does not dispute, his proposals to allot FM broadcast channels at Shiner, Batesville, and Tilden, Texas also conflict with the Quanah proceeding counterproposal and were filed after the governing cut-off date. *Crawford I* thus precludes any

challenge to the Commission's decision to dismiss those allotment proposals as well.

CONCLUSION

The petition for review should be denied.


Respectfully submitted,

Thomas O. Barnett
Assistant Attorney General

Matthew B. Berry
General Counsel

Robert B. Nicholson
Robert J. Wiggers
Attorneys

Daniel M. Armstrong
Associate General Counsel


Pamela L. Smith
Counsel

U.S. Department of Justice
Washington, D.C. 20530

Federal Communications Commission
Washington, D.C. 20554
(202) 418-1740 (telephone)
(202) 418-2819 (fax)

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08-1059

CERTIFICATE OF COMPLIANCE

Pursuant to the requirements of Fed. R. App. P. 32(a)(7), I hereby certify
that the accompanying "Brief for Respondents" in the captioned case contains
3401 words.



PAMELA L. SMITH
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
(202) 418-1740 (TELEPHONE)
(202) 418-2819 (FAX)

September 2, 2008

STATUTORY APPENDIX

47 U.S.C. § 307
47 C.F.R. § 1.401
47 C.F.R. § 1.420
47 C.F.R. § 73.202
47 C.F.R. § 73.207
47 C.F.R. § 73.210
47 C.F.R. § 73.211

47 U.S.C. § 307

§ 307. Licenses

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) Terms of licenses

(1) Initial and renewal licenses

Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

(2) Materials in application

In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

(3) Continuation pending decision

Pending any administrative or judicial hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405 or section 402 of this title, the Commission shall continue such license in effect.

(d) Renewals

No renewal of an existing station license in the broadcast or the common carrier services shall be granted more than thirty days prior to the expiration of the original license.

(e) Operation of certain radio stations without individual licenses

47 U.S.C. § 307 (continued)

(1) Notwithstanding any license requirement established in this chapter, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this chapter and with rules prescribed by the Commission under this chapter.

(3) For purposes of this subsection, the terms “citizens band radio service”, “radio control service”, “aircraft station” and “ship station” shall have the meanings given them by the Commission by rule.

(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.

47 C.F.R. § 1.401

§ 1.401 Petitions for rule making.

(a) Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52, and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or may be submitted electronically.

(c) The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.

(d) Petitions for amendment of the FM Table of Assignments (§ 73.202 of this chapter) or the Television Table of Assignments (§ 73.606) shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees. Petitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee.

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

47 C.F.R. § 1.420

§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments, or for amendment of certain FM assignments.

(a) Comments filed in proceedings for amendment of the FM Table of Allotments (§ 73.202 of this chapter) or the Television Table of Allotments (§ 73.606 of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the FM or Television Tables of Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

(c) Such comments and reply comments shall be accompanied by a certificate of service.

(d) Counterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments.

(e) An original and 4 copies of all petitions for rule making, comments, reply comments, and other pleadings shall be filed with the Commission.

(f) Petitions for reconsideration and responsive pleadings shall be served on parties to the proceeding and on any licensee or permittee whose authorization may be modified to specify operation on a different channel, and shall be accompanied by a certificate of service.

(g) The Commission may modify the license or permit of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.606(b), or it may modify the license or permit of an FM station to another class of channel through notice and comment procedures, if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed, an additional equivalent class of channel is also allotted, assigned or available for application.

Note to Paragraph (g): In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend § 73.606(b) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

Note 1 to Paragraph (h): Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

47 C.F.R. § 1.420 (continued)

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

Note to § 1.420: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to § 73.3573 may be initiated through the filing of an original petition for amendment of the FM Table of Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making, except that where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to § 73.3573, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

47 C.F.R. § 73.202

§ 73.202 Table of Allotments.

(a) General. The following Table of Allotments contains the channels (other than noncommercial educational Channels 201-220) designated for use in communities in the United States, its territories, and possessions, and not currently assigned to a licensee or permittee or subject to a pending application for construction permit or license. All listed channels are for Class B stations in Zones I and I-A and for Class C stations in Zone II unless otherwise specifically designated. Channels to which licensed, permitted, and "reserved" facilities have been assigned are reflected in the Media Bureau's publicly available Consolidated Data Base System.

(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast stations. The rules governing the use of those channels are contained in part 73, subpart C of this chapter. An entity that would be eligible to operate a noncommercial educational broadcast station can, in conjunction with an initial petition for rulemaking filed pursuant to part 1, subpart C of this chapter, request that a nonreserved FM channel (channels 221 through 300) be allotted as reserved only for noncommercial educational broadcasting by demonstrating the following:

(i) No reserved channel can be used without causing prohibited interference to TV channel 6 stations or foreign broadcast stations; or

(ii) The applicant is technically precluded from using the reserved band by existing stations or previously filed applications and the proposed station would provide a first or second noncommercial educational radio service to 2,000 or more people who constitute 10% of the population within the proposed allocation's 60 dBu (1 mV/m) service contour.

(2) Each channel listed in the Table of Allotments reflects the class of station that is authorized to use it based on the minimum and maximum facility requirements for each class contained in § 73.211.

Note: The provisions of this paragraph [(a)(2) of this section] become effective [3 years from the effective date of the Report and Order in BC Docket 80-90].

(b) Table of FM Allotments.

	Channel No.
ALABAMA	
Anniston	*261C3
Boligee	297A
Coosada	226A
Frisco City	278A
Livingston	242A
Maplesville	292A
New Hope	278A
Pine Level	248A
Rockford	286A
Saint Florian	274A
Waverly	232A

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ALASKA	

Palmer	238C1

ARIZONA	

Aguila	297C3
Ajo	295A
Ash Fork	259A
Bagdad	269C3
Chino Valley	223A
Ehrenberg	286C2
First Mesa	247C
Fredonia	278C1
Grand Canyon Village	273C1
Heber	288C2
Huachuca City	232A
Leupp	255C2
Overgaard	232C3
Parker	247C3
Patagonia	251A
Paulden	228C3
Peach Springs	268C3
Pima	*296A
Pinetop	294C1
Quartzsite	275C3, 290C2
Rio Rico	300A
Sells	285A
Snowflake	258C2
Somerton	*260C3
Taylor	278C3
Wickenburg	229C3
Willcox	*223C3

ARKANSAS	

Altheimer	251C3
Arkadelphia	228A
Bearden	224A
Clarendon	281A
Cove	232A
Daisy	293C3
Gassville	224A
Greenwood	268A
Hermitage	300A
Paragould	257A
Rison	255A
Sparkman	259A
Strong	296C3

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CALIFORNIA

Alturas	268C1, 277C
Amboy	237A
Barstow	267A
Big Sur	240A
Blythe	239B
Burney	225A
Buttonwillow	265A
Cambria	287A, 293A
Cedarville	260A
Cloverdale	274A
Coachella	278A
Cottonwood	221A
Covelo	245A
Desert Center	288A
Essex	280B
Greenfield	254A
Hemet	*273A
Kerman	224A
Kernville	289A
King City	275A
Lake Isabella	239A
Lamont	247A
McKinleyville	236C3, 277C3
Mecca	274A
Mojave	255A
Murrieta	281A
Nevada City	297A
Portola	269A
Randsburg	271A
Ridgecrest	229A, 252A
San Joaquin	299A
Shasta Lake	224A
Susanville	264A
Sutter Creek	*298A
Tecopa	291A
Trona	247A
Twentynine Palms	270A
Wasco	224A
Waterford	294A
Westley	*238A
Willow Creek	253A
Wofford Heights	251A

COLORADO

Akron	279C1
Arriba	240A
Aspen	228A
Blanca	249C2
Cheyenne Wells	224C1

47 C.F.R. § 73.202 (continued)

Crawford	274C3
Crested Butte	246C3
De Beque	275C3
Dinosaur	262C0
Durango	287A
Flagler	283C3
Fruita	268C3
Genoa	291C3
Gunnison	265C2, 299C3
Hotchkiss	258C3
Hugo	222A
Lake City	247A
Olathe	*270C2, *293C
Orchard Mesa	249C3
Silverton	281A
Steamboat Springs	255A, 289A
Strasburg	249C3
Stratton	246C1
Walden	226C3

CONNECTICUT

DELAWARE

DISTRICT OF COLUMBIA

FLORIDA

Big Pine Key	*239A
Cedar Key	261A
Cross City	249C3
Daytona Beach Shores	258A
Eastpoint	283A
Horseshoe Beach	*234C3
Islamorada	283C2
Jasper	298A
Key Largo	237C3
Key West	244A
Lake Park	262A
Live Oak	*261A
Okeechobee	291A
Otter Creek	*240A
Palm Coast	254A
Perry	228A
Port St. Joe	270C3
Silver Springs Shore	259A
Sugarloaf Key	289A

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GEORGIA

Alamo	287C3
Americus	295A
Calhoun	233A
Crawfordville	234A
Cusseta	279A
Dexter	276A
Homerville	246A
Lincolnton	254A
Milner	290A
Morgan	228A
Patterson	296A
Pineview	226A
Plains	290A
Plainville	285A
Reynolds	*245A
St. Simons Island	229C3
Tallapoosa	255A
Tignall	244A
Ty Ty	249A
Wadley	227A
Woodbury	233A
Young Harris	236A

HAWAII

Kailua-Kona	244A
Kihei	298C2

IDAHO

Dubois	243A
McCall	228C3, 238C3, 275C3, 293C3
Weiser	*280C1

ILLINOIS

Abingdon	252A
Altamont	288A
Augusta	253A
Canton	*277A
Cedarville	*258A
Clifton	*297A
Cuba	292A
Freeport	*295A
Grayville	229A
Pinckneyville	*282A
West Salem	266A

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INDIANA

Bloomfield	266A
Columbus	*228A
Farmersburg	*242A
Fowler	291A
Madison	*265A
Terre Haute	298B

IOWA

Asbury	*238A
Keosauqua	*271C3
Moville	*246A
North English	246A
Rudd	*268A

KANSAS

Americus	240A
Atwood	292C0
Council Grove	*281C3

KENTUCKY

Burgin	290A
Morgantown	256A
Perryville	298A
Science Hill	291A
Smith Mills	*233A

LOUISIANA

Anacoco	276C3
Bordelonville	280A
Cameron	296C3
Clayton	266A
Colfax	267A
Dulac	242A
Florien	242A
Franklin	295C3
Golden Meadow	*289C2
Harrisonburg	232A
Haynesville	288A
Homer	*272A
Hornbeck	269A
Lake Providence	224A
Leesville	224A
New Llano	252C3
Oak Grove	289A
Oil City	285A
Opelousas	279A

47 C.F.R. § 73.202 (continued)

Ringgold	*253C3
Rosepine	281A
St. Joseph	257C3
Wisner	300C3

MAINE

Monticello	234A
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MARYLAND

MASSACHUSETTS

Adams	255A
East Harwich	254A
Nantucket	249A
West Tisbury	*282A

MICHIGAN

Alpena	289A
Crystal Falls	280C2
Custer	263A
Ferrysburg	226A
Fife Lake	240C2
Frederic	237A
Harrison	280A
Hubbardston	*279A
Houghton	242C1
Ludington	242A
McBain	300A
Onaway	292C2
Paradise	234A
Pentwater	280A
Traverse City	283A

MINNESOTA

Baudette	233C1
Grand Portage	224C, 245C0, 274C
Red Lake	231C1

MISSISSIPPI

Calhoun City	272A
Greenwood	277A
Holly Springs	243A
Marietta	250A
Oxford	286A
Vaiden	271A
Vardaman	258A
Walnut Grove	244C2

47 C.F.R. § 73.202 (continued)

MISSOURI	

Alton	290A
Bourbon	231A
Columbia	252C2
Doolittle	283A
Eminence	281A
Grandin	283A
Huntsville	*278C2
Laurie	*265C3
Lowry City	285A
Madison	247C3
Marceline	256A
Marquand	295A
Moberly	223A

MONTANA	

Bozeman	*240C3
Charlo	251C3
Cut Bank	274C1
Lewistown	300C1
Lima	265C2
Montana City	293A
Outlook	289C
Roundup	248A
Whitehall	274A

NEBRASKA	

Arthur	300C1
Firth	229A
Hartington	232C2
Humboldt	272C3
Hyannis	250C1
Pierce	248C2

NEVADA	

Battle Mountain	253A
Fallon Station	287C
Fernley	231C3
Pahrump	272C3
Silver Springs	273C

NEW HAMPSHIRE	

Enfield	282A
Groveton	268A
Pittsburg	246A

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NEW JERSEY

NEW MEXICO

Alamo Community	*298A
Alamogordo	240C2
Animas	279C1
Carrizozo	261C2
Clayton	248C1
Grants	244C3
Las Vegas	283C2, 296A
Milan	270A
Roswell	237C0
Taos	228A, 288A
Taos Pueblo	292C3
Virden	228C1

NEW YORK

Amherst	221A
Celoron	237A
Indian Lake	290A
Keeseville	231A
Montauk	235A
Morrisonville	231A
Rhinebeck	*273A
Rosendale	255A, 273A

NORTH CAROLINA

Dillsboro	237A
Garysburg	276A
Ocracoke	224C1

NORTH DAKOTA

Berthold	264C
Tioga	281C1
Williston	253C1

OHIO

Ashtabula	241A
Cridersville	257A
McConnelsville	279A
North Madison	229A

OKLAHOMA

Arnett	285C2
Broken Bow	285A

47 C.F.R. § 73.202 (continued)

Buffalo	224C2
Cheyenne	247C3
Clayton	262A
Coalgate	242A
Cordell	*229A
Covington	290A
Erick	259C2
Haileyville	290A
Haworth	294A
Hennessey	249A
Holdenville	265A
Hollis	274C2
Kiowa	254A
Leedey	297A
Lone Wolf	224A
Millerton	265C2
Mooreland	254A, 300C2
Muldrow	286A
Okeene	268C3
Pawhuska	233A
Pittsburg	232A
Red Oak	227A
Reydon	264C2
Ringwood	285A
Savanna	275A
Sayre	269C2
Stuart	228A
Taloga	226A
Thomas	288A
Tipton	233C3
Tishomingo	259C3
Valliant	234C3
Vici	249A
Wapanucka	298A
Waukomis	292A
Waynoka	231C2
Weatherford	*286A
Wright City	226A
Wynnewood	*283A

OREGON

Clatskanie	225C3
Dallas	*252C3
Diamond Lake	299A
Ione	258A
Keno	253A
Madras	*251C1
Merrill	289A
Monument	280C1
Powers	293C2
Prairie City	260C

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Prineville	267C1, 299C3
Terrebonne	293C2
The Dalles	*268C3

PENNSYLVANIA

Erie	240A
Lawrence Park	224A
Liberty	*298A
Meyersdale	253A
Sheffield	286A
Susquehanna	227A
Sykesville	240A

RHODE ISLAND

SOUTH CAROLINA

Pendleton	240A
Quinby	237A

SOUTH DAKOTA

Edgemont	289C1
Lead	232C
Rosebud	257C
Sisseton	258C2
Wall	299C

TENNESSEE

Englewood	250A
Linden	267A
Lynchburg	230A
Oliver Springs	291A
Pigeon Forge	292A

TEXAS

Annona	263A
Asherton	284A
Aspermont	226C2
Austwell	290A
Baird	243C3
Ballinger	238A
Balmorhea	283C
Bangs	250C3
Benavides	282A
Benjamin	237C3
Big Lake	246A, 296C2
Big Spring	265C3
Big Wells	271A

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Blanket	284A
Blossom	224C2
Brackettville	234A
Bruni	293A
Buffalo Gap	227A
Burnet	*240A
Camp Wood	271A
Canadian	235C1
Carbon	238A
Carrizo Springs	295A
Centerville	274A
Channing	284C
Childress	281C2
Colorado City	257A
Comanche	280A
Cotulla	242A, 264A, 289A
Crosbyton	264C3
Crowell	293C3
Cuney	259A
Dalhart	261C
Denver City	*248C2
Detroit	282C2
Dickens	240A, 294A
Dilley	229A
Eagle Lake	237C3
El Indio	236A
Eldorado	258C1, 285A, 293A
Elkhart	265A
Encinal	259A, 273A, 286A
Encino	250A, 283A
Estelline	263C3
Floydada	255A
Fort Stockton	263C
Freer	288A
Garwood	247A
George West	250A, 292A
Goldwaithe	297A
Goliad	282A
Goree	275A
Grapeland	232C3
Groom	223A
Guthrie	252A
Hale Center	236C1
Hamilton	299A
Hamlin	283C2
[FN1] Harper	256C3
Hawley	269A
Hebbronville	232A, 254A
Hewitt	294A
Hico	285A
Hooks	231A
Idalou	299A

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Iraan	269C2
Jacksonville	236A
Jayton	231C2
Junction	277C3, 284A, 292A, 297A
Kermit	229A
Knox City	291A
La Pryor	278A
Leakey	257A, 275A, 299A
Llano	293C3
Lockney	271C3
Lometa	253A
Longview	300C2
Lovelady	288A
Marathon	278C
Mason	269C3, 281C2
Matador	221C2, 227C3
Matagorda	252A
McCamey	233C3
McLean	267C3
Memphis	283A, 292A
Menard	242A, 265C2, 287C3
Mertzson	278C2
Meyersville	261A
Milano	274A
Moody	256A
Mount Enterprise	231A
Muleshoe	227C1
Mullin	224C3
Munday	270C1
Newcastle	263A
O'Brien	261A
Ozona	275C3, 289C1
Paducah	234C3
Paint Rock	296C3
Palacios	264A
Pampa	277C2
Panhandle	291C3
Pearsall	227A
Pineland	256A
Port Isabel	288A
Premont	287A
Presidio	292C1
Quanah	255C3
Rankin	229C3
Richland Springs	235A, 299A
Rising Star	290C3
Roaring Springs	276C3
Robert Lee	289A
Roby	249A
Rocksprings	235C3
Rotan	290A
Rule	239C2, 253A

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Sabinal	296A
San Diego	273A
San Isidro	247A
Sanderson	274C1, 286C2
Santa Anna	282A
Savoy	297A
Shamrock	271A
Sheffield	224C2
Silverton	252A
Smiley	280A
Snyder	235C3
Sonora	237C3, 272A
Spur	254A, 260C3
Stamford	233A
Sweetwater	221C3
Teague	237C3
Turkey	244C2, 269A
Van Alstyne	*260A
Weinert	266C3
Wellington	248A
Wells	254A
Westbrook	272A
Wheeler	280C2
Zapata	292A

UTAH

Beaver	259A
Fountain Green	*260A
Manila	228A
Milford	285C
Mona	225A
Parowan	300C2
\$Salina	239C
Toquerville	280C

VERMONT

Albany	233A
Canaan	231C3
Poultney	223A

VIRGINIA

Alberta	299A
Belle Haven	252A
Iron Gate	270A
Lynchburg	229A
Shawsville	273A
Shenandoah	*296A

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WASHINGTON

Chewelah	*274C3
Coupeville	266A
Goldendale	240A
Oak Harbor	*233A, 277A
Port Angeles	229A
Sedro-Woolley	289A
Sequim	237A
Union Gap	285A
Waitsburg	272A

WEST VIRGINIA

Glenville	299A
Marlinton	292A
St Marys	*287A
Wardensville	239A
White Sulphur Springs	227A

WISCONSIN

Ashland	*275A
Augusta	*268C3
Boscobel	244C3
Crandon	276C3
Ephraim	295A
Hayward	*232C2
Laona	272C3
New Holstein	225A
Owen	242C3
Rhinelanders	243C3
Rosholt	263A
Tigerton	295A
Tomahawk	265C3
Two Rivers	255A
Washburn	*284A

WYOMING

Bairoil	235A
Centennial	248A
Jackson	*294C2
Marbleton	257C1
Meeteetse	259C
Pine Bluffs	238C3
Reliance	254C3
Sinclair	267C

47 C.F.R. § 73.202 (continued)

AMERICAN SAMOA	

CENTRAL MARIANAS	

GARAPAN	

GUAM	

[FN1] Dededo	243C1

PUERTO RICO	

Santa Isabel	251A

VIRGIN ISLANDS	

Charlotte Amalie	257A
Frederiksted	258A

FN1 Text of entry effective July 28, 2008. See 73 FR 38139.	

47 C.F.R. § 73.207

§ 73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to § 73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements of this section. The Commission will not accept applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of § 73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (See § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

(b) The distances listed in Tables A, B, and C apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. The five pairs of adjacent channels are the first (200 kHz above and 200 kHz below the channel under consideration), the second (400 kHz above and below), the third (600 kHz above and below), the fifty-third (10.6 MHz above and below), and the fifty-fourth (10.8 MHz above and below). The distances in the Tables apply regardless of whether the proposed station class appears first or second in the "Relation" column of the table.

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

Table A--Minimum Distance Separation Requirements in Kilometers (miles)

Relation MHz	Co-channel	200 kHz	400/600 kHz	10.6/10.8
A to A	115 (71)	72 (45)	31 (19)	10 (6)
A to B1	143 (89)	96 (60)	48 (30)	12 (7)
A to B	178 (111)	113 (70)	69 (43)	15 (9)
A to C3	142 (88)	89 (55)	42 (26)	12 (7)
A to C2	166 (103)	106 (66)	55 (34)	15 (9)
A to C1	200 (124)	133 (83)	75 (47)	22 (14)
A to C0	215 (134)	152 (94)	86 (53)	25 (16)
A to C	226 (140)	165 (103)	95 (59)	29 (18)
B1 to B1	175 (109)	114 (71)	50 (31)	14 (9)
B1 to B	211 (131)	145 (90)	71 (44)	17 (11)
B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
B1 to C2	200 (124)	134 (83)	56 (35)	17 (11)
B1 to C1	233 (145)	161 (100)	77 (48)	24 (15)
B1 to C0	248 (154)	180 (112)	87 (54)	27 (17)
B1 to C	259 (161)	193 (120)	105 (65)	31 (19)
B to B	241 (150)	169 (105)	74 (46)	20 (12)
B to C3	211 (131)	145 (90)	71 (44)	17 (11)
B to C2	241 (150)	169 (105)	74 (46)	20 (12)

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B to C1	270 (168)	195 (121)	79 (49)	27 (17)
B to C0	272 (169)	214 (133)	89 (55)	31 (19)
B to C	274 (170)	217 (135)	105 (65)	35 (22)
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C0	226 (140)	163 (101)	87 (54)	27 (17)
C3 to C	237 (147)	176 (109)	96 (60)	31 (19)
C2 to C2	190 (118)	130 (81)	58 (36)	20 (12)
C2 to C1	224 (139)	158 (98)	79 (49)	27 (17)
C2 to C0	239 (148)	176 (109)	89 (55)	31 (19)
C2 to C	249 (155)	188 (117)	105 (65)	35 (22)
C1 to C1	245 (152)	177 (110)	82 (51)	34 (21)
C1 to C0	259 (161)	196 (122)	94 (58)	37 (23)
C1 to C	270 (168)	209 (130)	105 (65)	41 (25)
C0 to C0	270 (168)	207 (129)	96 (60)	41 (25)
C0 to C	281 (175)	220 (137)	105 (65)	45 (28)
C to C	290 (180)	241 (150)	105 (65)	48 (30)

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(2) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than 3 kW ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher antenna HAAT based on a class contour distance of 24 km) are considered to be Class B1.

TABLE B--MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-Channel	Adjacent Channels				I.F.
	0 kHz	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz	
A-A	132	85	45	37		8
A-B1	180	113	62	54		16
A-B	206	132	76	69		16
A-C1	239	164	98	90		32
A-C	242	177	108	100		32
B1-B1	197	131	70	57		24
B1-B	223	149	84	71		24
B1-C1	256	181	106	92		40
B1-C	259	195	116	103		40
B-B	237	164	94	74		24
B-C1	271	195	115	95		40
B-C	274	209	125	106		40
C1-C1	292	217	134	101		48
C1-C	302	230	144	111		48
C-C	306	241	153	113		48

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(3) Under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). When applying Table C--

(i) U.S. or Mexican assignments or allotments which have been notified internationally as Class A are limited to a maximum of 3.0 kW ERP at 100 meters HAAT, or the equivalent;

(ii) U.S. or Mexican assignments or allotments which have been notified internationally as Class AA are limited to a maximum of 6.0 kW ERP at 100 meters HAAT, or the equivalent;

(iii) U.S. Class C3 assignments or allotments are considered Class B1;

(iv) U.S. Class C2 assignments or allotments are considered Class B; and

(v) Class C1 assignments or allotments assume maximum facilities of 100 kW ERP at 300 meters HAAT. However, U.S. Class C1 stations may not, in any event, exceed the domestic U.S. limit of 100 kW ERP at 299 meters HAAT, or the equivalent.

Table C--Minimum Distance Separation Requirements in Kilometers

Relation		Co-channel	200 kHz	400 kHz or 600 kHz	10.6 or 10.8 MHz (I.F.)
A to A		100	61		
25	8				
A to AA		111	68		
31	9				
A to B1		138	88	48	
11					
A to B		163	105	65	
14					
A to C1		196	129	74	
21					
A to C		210	161	94	
28					
AA to AA		115	72	31	
10					
AA to B1		143	96	48	
12					
AA to B		178	125	69	
15					
AA to C1		200	133	75	
22					
AA to C		226	165	95	
29					
B1 to B1		175	114	50	
14					

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B1 to B	211	145	71
17			
B1 to C1	233	161	77
24			
B1 to C	259	193	96
31			
B to B	237	164	65
20			
B to C1	270	195	79
27			
B to C	270	215	98
35			
C1 to C1	245	177	82
34			
C1 to C	270	209	102
41			
C to C	290	228	105
48			

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(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82-88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	17	22
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

47 C.F.R. § 73.210

§ 73.210 Station classes.

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in § 73.205. Allotted station classes are indicated in the Table of Allotments, § 73.202. Class A, B1 and B stations may be authorized in Zones I and I-A. Class A, C3, C2, C1, C0 and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in § 73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in § 73.211, its class shall be determined using the following procedure:

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of § 73.211. If this distance is less than or equal to 28 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I-A, except for Puerto Rico and the Virgin Islands:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class C3.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class C2.

(iii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iv) If this distance is greater than 72 km and less than or equal to 83 km, the station is Class C0.

(v) If this distance is greater than 83 km and less than or equal to 92 km, the station is Class C.

(4) For a station in Puerto Rico or the Virgin Islands:

(i) If this distance is less than or equal to 42 km, the station is Class A.

(ii) If this distance is greater than 42 km and less than or equal to 46 km, the station is Class B1.

(iii) If this distance is greater than 46 km and less than or equal to 78 km, the station is Class B.

47 C.F.R. § 73.211

§ 73.211 Power and antenna height requirements.

(a) Minimum requirements.

(1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, FM stations must operate with a minimum effective radiated power (ERP) as follows:

(i) The minimum ERP for Class A stations is 0.1 kW.

(ii) The ERP for Class B1 stations must exceed 6 kW.

(iii) The ERP for Class B stations must exceed 25 kW.

(iv) The ERP for Class C3 stations must exceed 6 kW.

(v) The ERP for Class C2 stations must exceed 25 kW.

(vi) The ERP for Class C1 stations must exceed 50 kW.

(vii) The minimum ERP for Class C and C0 stations is 100 kW.

(2) Class C0 stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). Class C stations must have an antenna height above average terrain (HAAT) of at least 451 meters (1480 feet).

(3) Stations of any class except Class A may have an ERP less than that specified in paragraph (a)(1) of this section, provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, exceeds the distance to the class contour for the next lower class. Class A stations may have an ERP less than 100 watts provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, equals or exceeds 6 kilometers.

(b) Maximum limits.

(1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

--			
Station class	Maximum ERP	Reference HAAT in meters (ft.)	Class contour distance in kilometer

S			

--			
A	6 kW (7.8 dBk)	100 (328)	
28			
B1	25 kW (14.0 dBk)	100 (328)	
39			

47 C.F.R. § 73.211 (continued)

B	.....	50 kW (17.0 dBk)	150 (492)
52			
C3	.....	25 kW (14.0 dBk)	100 (328)
39			
C2	.....	50 kW (17.0 dBk)	150 (492)
52			
C1	100 kW (20.0 dBk)	299 (981)
72			
C0	100 kW (20.0 dBk)	450
(1476)	83		
C	100 kW (20.0 dBk)	600
(1968)	92		

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(i) The reference distance of a station is obtained by finding the predicted distance to the 1mV/m contour using Figure 1 of § 73.333 and then rounding to the nearest kilometer. Antenna HAAT is determined using the procedure in § 73.313. If the HAAT so determined is less than 30 meters (100 feet), a HAAT of 30 meters must be used when finding the predicted distance to the 1 mV/m contour.

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 6 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 28 km in both cases.

(iii) Except as provided in paragraph (b)(3) of this section, no station will be authorized in Zone I or I-A with an ERP equal to 50 kW and a HAAT exceeding 150 meters. No station will be authorized in Zone II with an ERP equal to 100 kW and a HAAT exceeding 600 meters.

(2) If a station has an antenna HAAT greater than the reference HAAT for its class, its ERP must be lower than the class maximum such that the reference distance does not exceed the class contour distance. If the antenna HAAT is so great that the station's ERP must be lower than the minimum ERP for its class (specified in paragraphs (a)(1) and (a)(3) of this section), that lower ERP will become the minimum for that station.

(3) For stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

--			
Station	Maximum ERP	Reference HAAT	
Class			
class		in meters	
contour		(ft.)	distan
ce			
in			
kilometers			

47 C.F.R. § 73.211 (continued)

A	.....	6kW (7.8 dBk)	.....	240
	(787)	42		
B1	.....	25kW (14.0 dBk)	.....	150
	(492)	46		
B	.....	50kW (17.0 dBk)	.....	472
	(1549)	78		

(c) Existing stations. Stations authorized prior to March 1, 1984 that do not conform to the requirements of this section may continue to operate as authorized. Stations operating with facilities in excess of those specified in paragraph (b) of this section may not increase their effective radiated powers or extend their 1 mV/m field strength contour beyond the location permitted by their present authorizations. The provisions of this section will not apply to applications to increase facilities for those stations operating with less than the minimum power specified in paragraph (a) of this section.

(d) Existing Class C stations below minimum antenna HAAT. Class C stations authorized prior to January 19, 2001 that do not meet the minimum antenna HAAT specified in paragraph (a)(2) of this section for Class C stations may continue to operate as authorized subject to the reclassification procedures set forth in Note 4 to § 73.3573.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Charles Crawford, Petitioner

v.

Federal Communications Commission & USA, Respondents

Certificate Of Service

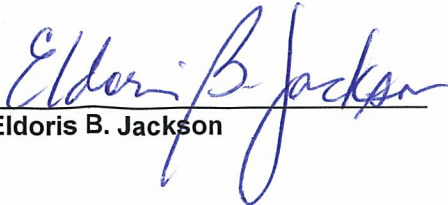
I, Eldoris B. Jackson, hereby certify that the foregoing typewritten "Brief for Respondents" was served this 2nd day of September, 2008, by mailing true copies thereof, postage prepaid, to the following persons at the addresses below:

Gene A. Bechtel
Law Office of Gene Bechtel, P.C.
1050 17th Street, N.W.
Suite 600
Washington DC 20036

Counsel For: Charles Crawford

Catherine G. O'Sullivan
United States Department of Justice
Antitrust Div., Appellate Section
905 Pennsylvania Avenue, N.W., Room 3224
Washington DC 20530-0001

Counsel For: USA


Eldoris B. Jackson